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(B) FILED
08 JUL 15 PM 4:03
155 RICHARD W. WIEKING
U.S. DISTRICT COURT
NORTHERN CALIFORNIA
E-filing

RS

8 IN THE UNITED STATES DISTRICT COURT FOR THE
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 JOHN & NANCY BENNETTS; JOHN F.
BENNETTS; THE CALIFORNIA
15 FRANCHISE TAX BOARD
BOARD; and BANK OF AMERICA,

16 Defendant.

CV 08 3413

COMPLAINT

SAN JOSE VENUE

18 Now comes the United States of America, by and through its undersigned counsel, and
19 complains and alleges as follows:

21 I. JURISDICTION AND VENUE

22 1. This is a civil action brought by the United States to reduce to judgment
outstanding federal tax assessments against defendants John and Nancy Bennetts and to foreclose
23 federal tax liens upon real property.

25 2. This action is commenced pursuant to Sections 7401, 7402 and 7403(a) of the
Internal Revenue Code of 1986, at the direction of the Attorney General of the United States,
26 with the authorization and sanction and at the request of the Office of Chief Counsel of the
27 Internal Revenue Service, a delegate of the Secretary of the Treasury.

1 3. Jurisdiction over this action is conferred upon this Court by 28 U.S.C. §§ 1340
2 and 1345, and under 26 U.S. C. § 7402(a) of the Internal Revenue Code of 1986.

3 4. Venue is proper in the Northern District of California because defendant
4 taxpayers, John and Nancy Bennetts, reside at and the subject property is located within this
5 judicial district. 28 U.S.C. §§ 1391 and 1396.

6

7 **II. IDENTIFICATION OF DEFENDANTS**

8 5. Defendant John F. Bennetts currently resides at 25880 Rancho Alto, Carmel
9 Valley, California, which is within the jurisdiction of this Court.

10 6. Defendant Nancy Bennetts currently resides at 25880 Rancho Alto, Carmel
11 Valley, California, which is within the jurisdiction of this Court.

12 7. California Franchise Tax Board is made a party pursuant to 26 U.S.C. § 7403(b)
13 in that it may claim an interest in the property that the United States seeks to foreclose.

14 8. Bank of America is made a party pursuant to 26 U.S.C. § 7403(b) in that it may
15 claim an interest in the property that the United States seeks to foreclose.

16

17 **III. IDENTIFICATION OF PROPERTY SOUGHT TO BE FORECLOSED**

18 9. The property which is the subject of this suit is real property located at 25880
19 Rancho Alto, Carmel Valley, California, (hereinafter referred to as the "Subject Property"), and
20 described in the Official Records in the Office of the County Recorder, County of Monterey,
21 California, as follows:

22 Lot 17, Block 3, Tract No. 423 Rancho Tierra Grande Subdivision No. 1, filed January 8,
23 1963 in the office o the County Recorder of the County of Monterey, State of California,
in Map Book 7, Cities and Towns.

COUNT I**REDUCE ASSESSMENTS TO JUDGMENT**

10. The United States reincorporates the allegations in paragraphs 1 through 9 above,
 4 as if fully set forth herein.

11. A delegate of the Secretary of the Treasury made assessments against defendants
 6 John and Nancy Bennetts for unpaid federal income taxes (Form 1040), penalties and interest for
 7 the 1991, 1992, 1993, 1998, 1999, 2000, 2002, 2003, and 2004 tax years as set forth below:

TAX YEAR/ TYPE OF TAX	DATE OF ASSESSMENT	BALANCE OF TAX INTEREST, FEES & PENALTIES AS OF March 31, 2008	NOTICE OF LIEN FILED IN MONTEREY COUNTY
1991/Income	2/20/1995	\$180,707.70	3/21/2008
1992/Income	2/13/1995	\$205,669.04	3/21/2008
1993/Income	2/13/1995	\$126,767.60	3/21/2008
1998/Income	11/22/1999	\$136,262.63	12/15/1999
1999/Income	10/09/2000	\$98,554.13	05/11/2000
2000/Income	11/18/2002	\$16,532.95	12/15/1999
2002/Income	11/24/2003	\$55,519.34	10/29/2004
2003/Income	08/15/2005	\$100,269.69	11/21/2005
2004/Income	08/08/2005	\$167,271.68	11/16/2005

12. Despite timely notice and demand for payment of the taxes, penalties, and interest
 19 described in paragraph 11, defendants John and Nancy Bennetts have neglected, failed, or
 20 refused to pay the taxes, penalties and interest described in paragraph 11, and there remains due
 21 and owing on said assessments, as of March 31, 2008 the sum of \$1,087,554.76, plus accrued
 22 interest and penalties and other statutory additions as provided by law, minus any credits.
 23

13. A delegate of the Secretary of the Treasury made assessments against defendant
 24 John F. Bennetts for unpaid unemployment (Form 940) and employment (Form 941) taxes
 25 pursuant to 26 U.S.C. § 6672, penalties and interest for the quarters ended 12/31/2000,
 26 6/30/2001, 9/30/2001, 12/31/2001, 3/31/2006, and years 1993, and 2005, and a Civil Penalty as
 27
 28

1 set forth below:

TAX YEAR/ TYPE OF TAX	DATE OF ASSESSMENT	BALANCE OF TAX INTEREST, FEES & PENALTIES AS OF March 31, 2008	NOTICE OF LIEN FILED IN MONTEREY COUNTY
2000/(941)	10/1/2001	\$2,090.27	10/25/2004
2001/(941)	9/3/2001	\$2,524.04	10/25/2004
2001/(941)	12/17/2001	\$11,244.58	10/25/2004
2001/(941)	3/18/2002	\$1,203.00	10/25/2004
2006/(941)	5/29/2006	\$13,413.75	requested
2005/(940)	1/1/2007	\$336.91	5/30/2007
1993/Civil Pen	6/17/1996	\$11,350.50	10/25/2004

11 14. Despite timely notice and demand for payment described in paragraph 13,
 12 defendant John F. Bennetts has neglected, failed, or refused to pay the amounts due in paragraph
 13 13, and there remains due and owing on said assessments, as of March 31, 2008 the sum of
 14 \$42,163.05, plus accrued interest and penalties and other statutory additions as provided by law,
 15 minus any credits.

16 15. The unpaid taxes described in paragraphs 12 and 14 amount to \$1,129,717.81,
 17 which constitutes the total amount owed by John F. Bennetts and Nancy Bennetts to the federal
 18 government as of March 31, 2008.

19 COUNT II

20 FORECLOSE FEDERAL TAX LIENS

21 16. The United States reincorporates the allegations in paragraphs 1 through 15
 22 above, as if fully set forth herein.

23 17. Pursuant to 26 U.S.C. §§ 6321 and 6322, liens arose in favor of the plaintiff,
 24 United States of America, upon all property and rights to property, whether real or personal,
 25 belonging to defendants John and Nancy Bennetts, as of the dates of the assessments described in
 26 paragraphs 11, 13, 14, 15, or acquired thereafter.

27 18. A Delegate of the Secretary of the Treasury filed Notices of Federal Tax Lien
 28 against defendants John and Nancy Bennetts, with the Monterey County Recorder in Salinas,

1 California, on March 31, 2008, for the 1991, 1992, and 1993 tax years; on December 15, 1999,
2 for the 1998 and 2000 tax years; on May 11, 2000 for the 1999 tax year; on October 29, 2004,
3 for the 2002 tax year; on November 21, 2005 for the 2003 tax year, and on November 16, 2005
4 for the 2004 tax year.

5 19. A Delegate of the Secretary of the Treasury filed Notices of Federal Tax Lien
6 against defendant John F. Bennetts, with the Monterey County Recorder in Salinas, California,
7 on October 25, 2004, for the 1993, 2000, and 2001 tax years; on May 30, 2007, for the 2005 tax
8 year, and a notice has been requested for the 2006 tax year.

9 20. The property described in paragraph 9 has at all pertinent times been property
10 belonging to defendants John and Nancy Bennetts, and only to them, for purposes of the tax lien
11 provisions of the Internal Revenue Code. Accordingly, the federal tax liens at issue in
12 paragraphs 11, 13, 18, and 19 attached to the property when the liens arose, and the tax liens have
13 continued to the present and without interruption to attach to such property.

14 **WHEREFORE**, the plaintiff, United States of America, prays for the following relief:

15 1. That this Court determine and adjudge that defendants John and Nancy Bennetts
16 are together personally liable to the United States for the sum of \$1,087,554.76, plus interest and
17 statutory additions, as provided by law, that have accrued, and continue to accrue, since March
18 31, 2008; that a judgment in that amount be entered against defendants John and Nancy Bennetts
19 and in favor of the United States of America;

20 2. That this Court determine and adjudge that defendant John F. Bennetts is
21 personally liable to the United States for the sum of \$42,163.05, plus interest and statutory
22 additions, as provided by law, that have accrued, and continue to accrue, since March 31, 2008;
23 that a judgment in that amount be entered against defendant John F. Bennetts and in favor of the
24 United States of America;

25 3. That this Court determine and adjudge that the United States has liens for unpaid
26 federal taxes against defendants John and Nancy Bennetts, and against the real property described
27 in paragraph 9, which property is the subject of this suit, for the sum of \$1,129,717.81, plus
28 interest and statutory additions, as provided by law, that have accrued, and continue to accrue,

1 since March 31, 2008;

2 4. That the tax liens of the United States be foreclosed, and that this Court order the
3 sale of the real property described in paragraph 9;

4 5. That, if the amounts distributed to the United States pursuant to the sale of the real
5 property are insufficient to satisfy fully the above-described tax liabilities, the United States have
6 judgment for the deficiency against defendants John and Nancy Bennetts;

7 6. That the United States be granted its costs and attorneys' fees; and

8 7. For such other and further relief as is just and proper.

Respectfully submitted,

JOSEPH P. RUSSOINIELLO
United States Attorney

To Rose

CYNTHIA L. STIER
Assistant United States Attorney
Tax Division

JS 44 (Rev. 12/07) (cand rev 1-16-08)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

DEFENDANTS

JOHN BENNETTS, et al.

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant MONTEREY
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

CYNTHIA L. STIER, AUSA, TAX DIVISION
450 Golden Gate Ave., 9th Floor, Box 36055
San Francisco, CA 94102
(415) 436-7000

Attorneys (If Known)

CO8-3413 RS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

		III. CITIZENSHIP OF PRINCIPAL PARTIES				(Place an "X" in One Box for Plaintiff and One Box for Defendant)	
		(For Diversity Cases Only)					
		PTF	DEF			PTF	DEF
<input checked="" type="checkbox"/>	1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
<input type="checkbox"/>	2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
			<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
					Citizen or Subject of a Foreign Country	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 450 Commerce	<input type="checkbox"/> 440 Deportation
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 490 Selective Service
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 810 Securities/Commodities/ Exchange	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 875 Customer Challenge	<input type="checkbox"/> 12 USC 3410
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 900 Appeal of Fee Determination	<input type="checkbox"/> Under Equal Access to Justice
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> Habeas Corpus:	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 871 IRS - Third Party
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWS/DIWW (405(g))	<input type="checkbox"/> 26 USC 7609
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 890 Other Statutory Actions	
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 891 Agricultural Acts	
			<input type="checkbox"/> 892 Economic Stabilization Act	
			<input type="checkbox"/> 893 Environmental Matters	
			<input type="checkbox"/> 894 Energy Allocation Act	
			<input type="checkbox"/> 895 Freedom of Information Act	
			<input type="checkbox"/> 900 Appeal of Fee Determination	
			<input type="checkbox"/> Under Equal Access to Justice	
			<input type="checkbox"/> 950 Constitutionality of State Statutes	
IMMIGRATION				
		<input type="checkbox"/> 462 Naturalization Application		
		<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		
		<input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only) 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened

Transferred from

 5 another district (specify) 6 Multidistrict Litigation

Appeal to District

 7 Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause:

Reduce to Judgment Federal Tax Assessments & Foreclose Tax Liens

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE
"NOTICE OF RELATED CASE".**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)
(PLACE AND "X" IN ONE BOX ONLY)** SAN FRANCISCO/OAKLAND SAN JOSE

DATE

7/14/08

SIGNATURE OF ATTORNEY OF RECORD

CYNTHIA L. STIER, AUSA, TAX DIVISION